

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,) 3:93-cr-00035-HDM-1
Plaintiff,)
vs.) ORDER
MARK MURRAY,)
Defendant.)

Defendant filed a successive 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence contending that his sentence should be vacated because the federal carjacking offense which served as a predicate for his 18 U.S.C. § 924(c) conviction no longer qualifies as a “crime of violence” in light of *Johnson v. United States*, 135 S.Ct. 2551 (2015) (ECF No. 77). This court denied defendant’s motion on February 12, 2018 (ECF No. 88) based on the Ninth Circuit Court of Appeals’ decision in *United States v. Gutierrez*, 876 F.3d 1254, 1257 (2017) wherein the court held that “the federal offense of carjacking is categorically a crime of violence under § 924(c).” Defendant requests that this court issue a certificate of appealability.

The standard for issuance of a certificate of appealability calls for a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28 U.S.C. § 2253(c) as follows: "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must

1 demonstrate that reasonable jurists would find the district court's
2 assessment of the constitutional claims debatable or wrong." *Slack*
3 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221
4 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further
5 illuminated the standard for issuance of a certificate of
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The
7 Court stated in that case:

8 We do not require petitioner to prove, before the
9 issuance of a COA, that some jurists would grant the
petition for habeas corpus. Indeed, a claim can be
10 debatable even though every jurist of reason might
agree, after the COA has been granted and the case
has received full consideration, that petitioner
11 will not prevail. As we stated in *Slack*, "[w]here a
district court has rejected the constitutional
12 claims on the merits, the showing required to
satisfy § 2253(c) is straightforward: The petitioner
13 must demonstrate that reasonable jurists would find
the district court's assessment of the
14 constitutional claims debatable or wrong."

15 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

16 The court has considered the issues raised by defendant, with
17 respect to whether they satisfy the standard for issuance of a
18 certificate of appeal, and the court determines that none meet that
19 standard. The court therefore denies a certificate of
20 appealability in this case.

21 DATED: This 13th day of February, 2018.
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25 UNITED STATES DISTRICT JUDGE
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